

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

T. Terell Bryan, # 254638, <i>aka Terence Bryan, aka Terence Terell Bryan,</i>	)	C/A No. 4:08-3556-TLW-TER
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Report and Recommendation
	)	
SCDC,;	)	
IGC,	)	
D. Tatarsky;	)	
Ofc. Buehler, et al, all in,	)	
	)	
Defendants.	)	

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This is a civil action filed *pro se* by a state prison inmate.<sup>1</sup> Plaintiff is currently incarcerated at Perry Correctional Institution. It is judicially noticed that this prisoner has been involved as a plaintiff in over twenty civil actions in this Court since 2002. *Aloe Creme Laboratories, Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (5th Cir. 1970)(a federal court may take judicial notice of the contents of its own records).

In filing the present case, Plaintiff submitted fifty pages of documents to the Court, along with a completed Form AO 240 and Financial Certificate seeking *in forma pauperis* status. The Form AO 240 and Financial Statement were docketed as a Motion for Leave to Proceed in forma pauperis. (Entry 2). The other fifty pages of the submission were docketed as a Complaint. (Entry 1). The first page of Plaintiff's Complaint is a one-page, handwritten document with a caption of "Complaint (Jury Trial

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<sup>1</sup> Pursuant to 28 U.S.C. §636(b)(1), and D.S.C. Civ. R. 73.02(B)(2)(e), this magistrate judge is authorized to review all pretrial matters in such *pro se* cases and to submit findings and recommendations to the District Court. See 28 U.S.C. § § 1915(e); 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).

Demanded);”the remaining forty-nine pages consist of South Carolina Department of Corrections (SCDC) inmate grievances and orders and/or motions that were produced in another civil action that Plaintiff has currently pending in this Court: *Bryan v. SCDC*, Civil Action No. 4:08-1590-TLW-TER.

The first page of the Complaint contains five full and one partial numbered paragraphs with allegations about jurisdiction, venue, and about problems Plaintiff seems to be having with requests for “up to date law cases” at Perry Correctional Institution. The final numbered paragraph on page 1 of the Complaint states: “Per the attached Exhibit # 103, Buchler is lying saying his is in . . . .” This is not a complete sentence, but it appears to somehow be intended to “introduce” the remaining forty-nine pages of grievance forms and documents produced in Civil Action No. 4:08-1590-TLW-TER. There is no request for relief from this Court found in any of the documents submitted as the Complaint in this case.

Under established local procedure in this judicial district, a careful review has been made of Plaintiff’s *pro se* Complaint filed in this case. This review has been conducted pursuant to the procedural provisions of 28 U.S.C. § § 1915, 1915A, and the Prison Litigation Reform Act of 1996, and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995)(*en banc*); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983); *Boyce v. Alizaduh*, 595 F.2d 948 (4th Cir. 1979).

*Pro se* complaints are held to a less stringent standard than those drafted by attorneys, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, \_ U.S. \_, 127 S. Ct. 2197 (2007); *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980); *Cruz v. Beto*, 405 U.S. 319 (1972). When a federal court is evaluating a *pro se*

complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N. Y.*, 529 F.2d 70, 74 (2d Cir. 1975). Nevertheless, the requirement of liberal construction does not mean that this Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Social Servs.*, 901 F.2d 387 (4th Cir. 1990). Even under this less stringent standard, however, the Complaint filed in this case is subject to summary dismissal under the provisions of 28 U.S.C. § 1915(e)(2)(B).

The Complaint in this case is subject to summary dismissal because it is in violation of the directive in Federal Rule of Civil Procedure 8(a)(2) that pleadings shall contain “a short and plain statement” of the basis for Plaintiff's claims against Defendants. As stated above, Plaintiff submitted only one page of actual allegations and then simply attached a large number of SCDC grievance forms and documents from another case. He did not submit a request for relief from this Court nor can this Court discern any kind of “claim” against any of the Defendants from the few allegations contained on page 1 of the Complaint. As a result, without excessive expenditure of precious judicial resources, it is impossible to determine what Plaintiff is asserting against each Defendant and/or what, if anything, Plaintiff wants this Court to do for him as a result of his filings.

Although the “liberal pleading requirements” of Rule 8(a) only require a “short and plain” statement of the claim, Plaintiff must do more than make mere conclusory statements to support his claim, and he must not simply attach documents prepared elsewhere to his filing and then expect the Court to go through such documents and make up a claim for him. *See Brown v. Zavaras*, 63 F.3d 967 (10<sup>th</sup> Cir. 1995); *see Adams v. Rice*, 40 F.3d 72 (4<sup>th</sup> Cir. 1994) (affirming district court's dismissal of plaintiff's suit as frivolous where allegation was conclusory and nonsensical on its face); *White v. White*, 886 F.2d 721, 723 (4<sup>th</sup> Cir. 1989) (same, where plaintiff's complaint “failed to contain

any factual allegations tending to support his bare assertion”). It is well settled that federal courts performing their duties of construing *pro se* pleadings are not required to be "mind readers" or “advocates” for state prisoners or *pro se* litigants. See *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4<sup>th</sup> Cir. 1978).

Additionally, as stated above, Plaintiff failed to request any relief or suggest to this Court any remedy for whatever he thinks Defendants did to him. Were this Court to find that Plaintiff’s rights have been violated, but order no remedy, it would, in effect, be rendering an advisory opinion. Such action is barred by Article III of the Constitution. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); *Boston Chapter, NAACP v. Beecher*, 716 F.2d 931, 933 (1st Cir. 1983); see *Norvell v. Sangre de Cristo Dev. Co.*, 519 F.2d 370, 375 (10th Cir. 1975) (federal courts do not render advisory opinions). The Tenth Circuit Court of Appeals faced an analogous situation in *Pub. Serv. Co. v. EPA*, 225 F.3d 1144 (10th Cir. 2000). In that case, addressing the plaintiff’s failure to request specific relief, the court stated,

This court would violate Article III's prohibition against advisory opinions were it to do that which [the plaintiff] requests, *i.e.*, issue a mere statement that the EPA's interpretation and application of the law was incorrect without ordering some related relief.

*Id.* at 1148 n. 4 (citing *U. S. v. Burlington N. R.R.*, 200 F.3d 679, 699 (10th Cir. 1999)). Cf. *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1092 (D.C. Cir. 1996)(holding that, if the court were barred from granting the requested relief, its decision “would be an advisory opinion barred by Article III of the Constitution”). Due to the lack of factual allegations adequately asserting wrongdoing attributable to any Defendant and the lack of any request for relief, the Complaint is both frivolous and fails to state a claim on which relief may be granted. See *Cochran v. Morris*, 73 F.2d 1310 (4<sup>th</sup>

Cir. 1996)(statute allowing dismissal of *in forma pauperis* claims encompasses complaints that are either legally or factually baseless); *Weller v. Dep't of Social Servs.*, 901 F.2d 387, 389 (4<sup>th</sup> Cir. 1990)(dismissal proper where there were no allegations against defendants); *see also Inmates v. Owens*, 561 F.2d 560, 562-63 (4th Cir. 1977)(dismissing a *pro se* complaint for improper pleading); *Holsey v. Collins*, 90 F.R.D. 122, 128 (D. Md. 1981).

### **Recommendation**

Accordingly, it is recommended that the District Court dismiss the Complaint in this case *without prejudice* and without issuance and service of process. *See Denton v. Hernandez; Neitzke v. Williams; Haines v. Kerner; Brown v. Briscoe*, 998 F.2d 201, 202-04 (4th Cir. 1993); *Boyce v. Alizaduh; Todd v. Baskerville*, 712 F.2d at 74; *see also* 28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).

Furthermore, due to the absence of a viable claim on which relief can be granted based on Plaintiff's filings in this case and the resulting frivolity of this case, 28 U.S.C. § 1915A(b)(1) is applicable in this case. As a result, I also recommend that this case be deemed a "strike" for purposes of the "three strikes" rule of 28 U.S.C. § 1915(g).

Plaintiff's attention is directed to the important notice on the next page.

s/Thomas E. Rogers, III  
Thomas E. Rogers, III  
United States Magistrate Judge

November 13, 2008  
Florence, South Carolina

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court judge need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
P.O. Box 2317  
Florence, South Carolina 29503

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *U. S. v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).